

RONALD C. DAUGHERTY

IBLA 95-107

Decided February 18, 1998

Appeal from a Decision of the California State Office, Bureau of Land Management, declaring mining claim CAMC 262117 null and void ab initio.

Reversed.

1. Exchanges of Land: Forest Exchanges--Mining Claims: Lands Subject to

Pursuant to 43 C.F.R. § 2202.1(b) (1993), the filing of a notice of an offer for a national forest exchange with the authorized BLM officer and the notation of such proposed exchange on the public land records segregates the National Forest System lands included in the proposed exchange from appropriation, location, or entry under the general mining laws for 2 years. A mining claim located on lands included in a proposed Forest Service exchange between the time a notice of offer for forest exchange is received by BLM and the time the proposed exchange is posted on the public land records is not null and void ab initio where it is recorded with BLM within 90 days of its date of location as required by section 314 of FLPMA, 43 U.S.C. § 1744 (1994).

APPEARANCES: Christopher Charles Hohns, Esq., Grass Valley, California, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Ronald C. Daugherty has appealed from a Decision of the California State Office, Bureau of Land Management (BLM), dated October 5, 1994, which declared the AU placer mining claim (CAMC 262117) null and void ab initio, because the claim was located on lands segregated from location under the

general mining laws. ^{1/} In connection with his appeal, Daugherty filed a Petition to Stay, which the Board granted by Order dated July 16, 1994.

The AU placer mining claim, located on November 5, 1993, is situated in the NW^{1/4}NW^{1/4} (properly described as located in Lot 6) of sec. 21, T. 18 N., R. 10 E., Mount Diablo Meridian, Nevada County, California. Daugherty recorded the claim with the county recorder on January 28, 1994, and with BLM on January 31, 1994, within the 90-day period required by section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1994).

By letter dated November 1, 1993, to the Title and Records Unit, California State Office, BLM, and received November 2, 1993, the Leader, Central Zone Land Adjustment Team, U.S. Forest Service, Eldorado National Forest, United States Department of Agriculture, enclosed the legal description for certain Federal and non-Federal lands included in a National Forest land exchange proposed by Sierra Pacific Industries, requesting BLM to effect serialization and segregation of the Federal lands. The legal description listed lot 6 in sec. 21, T. 18 N., R. 10 E. Serial No. CACA 33543 was assigned to the exchange application by BLM.

By letter dated September 21, 1994, the Acting Forest Supervisor, Tahoe National Forest, requested that BLM inform Daugherty and Nunnick that the AU placer mining claim was null and void pursuant to exchange application CACA 33543.

In accordance with this request from the Forest Service, BLM issued its Decision declaring the AU placer mining claim "null and void ab initio." The Decision found that the land on which Appellant's mining claim is situated is included in Forest Service exchange application CACA 33543 which was segregated from entry under the mining laws pursuant to 43 C.F.R. § 2202.1(b) (1993).

The Decision states: "[T]he application from the forest service [sic] for the exchange was received in this office on November 2, 1993; therefore, the lands were segregated from mineral location and entry on November 2, 1993, which preceded the date of attempted location on November 5, 1993."

In his Statement of Reasons on appeal (SOR), Daugherty does not dispute that BLM received the Forest Service notice of the proposed exchange on November 2, 1993, that the AU placer mining claim was located on November 5, 1993, or that the lands proposed for exchange include the site of the AU placer claim. Rather, Daugherty challenges BLM's declaration

^{1/} While the record shows that Ronald D. Nunnick, the co-owner of the AU placer mining claim, received a copy of the BLM Decision, he did not file a notice of appeal.

that his claim was located when the land was segregated from entry under the general mining laws. On appeal, he contends that 43 C.F.R. § 2202.1(b) requires two separate acts to effect segregation: the filing by the Forest Service of the notice of an offer for a forest exchange with BLM and "the notation of such proposed exchange on the public land records." (SOR at 1.) He asserts that BLM noted the Forest Service exchange application, CACA 33543, on the public land records after the date of location of his mining claim. Appellant argues that the land was therefore not segregated from entry at the time he located the claim. The BLM has not filed an answer in this case.

[1] The applicable regulation, 43 C.F.R. § 2202.1(b) (1993), provides, in relevant part:

The filing of a notice of an offer for forest exchange with the authorized officer and the notation of such proposed exchange on the public land records shall segregate the National Forest System lands included in the proposed exchange from appropriation, location or entry under the general mining laws but not from the applicability of those public land laws governing the use of the National Forest System under leases[,] license or permit, or governing the disposal of mineral or vegetative resources, other than under the general mining laws.

The question presented by this appeal is whether the land in lot 6, sec. 21 was open to mineral entry on November 5, 1993, when Daugherty made his location. We conclude that it was.

The BLM did not forward the land status records covering the period that Appellant located his AU placer mining claim. The case file contains a Master Title Plat dated July 23, 1994, with the Forest Service exchange application noted, a Historical Index noting the Forest Service exchange application with an action date of November 2, 1993, and a Serial Register Page dated September 26, 1994, which states that the records were noted on November 12, 1993. Significantly, the file contains a copy of the Forest Service letter of November 1, 1993, requesting segregation based on the proposed land exchange. There appears at the bottom of the page, an imprinted stamp, captioned Records Noted. The stamp, contains six titled spaces, three of which are completed indicating that BLM staff took the following action related to Forest Service exchange application CACA 33543: noted the Master Title Plat on November 12, 1993; noted the Historical Index on November 15, 1993; and verified the notation process on December 1, 1993.

Lands within an exchange proposal are segregated from location upon the filing of a notice of a forest exchange offer and the notation of such proposed exchange on the public land records. 43 C.F.R. § 2202.1(b) (1993); see Dean Staton, 136 IBLA 161 (1996); John & Maureen Watson, 113 IBLA 235 (1990); Oscar E. Harding, 110 IBLA 117 (1990). The above- cited documents contained in the case file establish the date on which

BLM made the notation of the proposed Forest Service exchange application to the various public land records. We conclude that the segregative effect of the Forest Service exchange application began on November 12, 1993. This date was after Appellant located his mining claim. Therefore, BLM was in error in finding Daugherty's mining claim null and void ab initio. See Dean Staton, *supra*, at 164.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the BLM Decision of October 5, 1994, declaring the AU placer mining claim (CAMC 262117) null and void ab initio is reversed.

Gail M. Frazier
Administrative Judge

I concur.

James P. Terry
Administrative Judge

